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The Mistake That Is the Libertarian Party

Voting the LP line could swing the election to the Democrats. That's not an outcome libertarians should hope for.

By: RANDY E. BARNETT – November 5th, 2012

In 1972, the Libertarian Party nominated University of Southern California philosophy Prof. John Hospers as its first presidential candidate and ran Tonie Nathan for vice president. When Roger MacBride, a Virginia Republican elector pledged to Richard Nixon, voted instead for Hospers-Nathan, he cast the first electoral vote in American history for a woman. The Libertarian Party was off and running. In 1976, it nominated the renegade elector as its presidential candidate.

As a young libertarian, I was very enthusiastic about the formation of the Libertarian Party. I proudly cast my vote for Roger MacBride for president. I attended the 1975 national convention in New York that nominated him. But, while I am as libertarian today as I was then, I have come to believe that the Libertarian Party was a mistake.

The reason is simple. Unlike a parliamentary system in which governments are formed by coalitions of large and small parties, our electoral system is a first-past-the-post, winner-take-all one in which a winning presidential candidate just needs to get more than 50% of the vote. This means each contending "major" party is itself a coalition that needs to assemble enough diverse voting groups within it to get to 51%. Hence the need to appeal to the so-called moderates and independents rather than the more "extreme" elements within.

To the extent that a third party is successful, it will drain votes from the coalition party to which it is closest and help elect the coalition party that is further removed from its interests. The Libertarian Party's effort will, if effective, attract more

libertarian voters away from the candidate who is marginally less hostile to liberty, and help hand the election to the candidate who is more hostile to liberty.

Fortunately, because this drawback is so obvious, the Libertarian Party's presidential vote has remained minuscule. (It was about 0.4% in 2008, though it could cost Mitt Romney the electoral votes of New Hampshire this time around). Most libertarian voters resist the party's call, even when, as this year, it has nominated a good man like Gary Johnson, the former governor of New Mexico.

Some have defended the LP by saying it is an expressive outlet for political libertarians, as distinct from more intellectual or policy types. Here too the LP has been counterproductive. By drawing libertarian politicians from both major parties, the LP makes these parties less libertarian at the margin than they would otherwise be. In each major-party coalition, the libertarian element is weaker precisely to the extent that libertarian politicians are expending their energies on behalf of the LP.

Libertarian activists should choose whichever party they feel more comfortable working within. That's what Ron Paul did. Likewise, Rand Paul has brought his libertarianism inside the GOP tent. The small-"l" libertarians in the tea party movement identified the Republican Party as the coalition closest to their concerns about fiscal responsibility and the growth of government power, and they have gone about making the GOP more libertarian from the grass-roots up. They have moved the party in a libertarian direction, as has the Republican Liberty Caucus.

Despite all this, some libertarians continue to insist that, because the Republican and Democrats are equally bad for liberty, it makes no difference who gets elected. However true this once was, in recent years Republicans have been better for liberty and Democrats have been worse.

It was a Democratic Congress and president who gave us the federal takeover of the health-care industry that will bring us closer to a Western European-style social democracy. All four Democratic-appointed Supreme Court justices voted to uphold ObamaCare as constitutional, with four Republican-appointed dissenters.

Are Democrats better than Republicans on personal liberty? Neither has been great on that score, but Democrats have been the bigger disappointment. When I took the medical-marijuana case to the Supreme Court in 2004, I got zero votes from the left side of the court while garnering the votes of Chief Justice William Rehnquist and

Justices Clarence Thomas and Sandra Day O'Connor. And President Obama's Justice Department has reneged on his campaign promise to refrain from going after medical-marijuana dispensaries.

Neither party wants to question the futile and destructive "war on drugs." But Republicans have been much better on free speech in recent years. With respect to economic liberty, the Environmental Protection Agency has restricted land use throughout the nation and would do more if not stopped. Dodd-Frank has amped up restrictions on financial services.

Libertarians need to adjust their tactics to the current context. This year, their highest priority should be saving the country from fiscal ruin, arresting and reversing the enormous growth in federal power—beginning with repealing ObamaCare—and pursuing a judiciary who will actually enforce the Constitution. Which party is most likely to do these things in 2013?

Citing the Republican Congress under George W. Bush, some libertarians contend that divided government is best for liberty. Yes, divided government is good for stopping things (until some grand deal is made). But divided government won't repeal ObamaCare and Dodd-Frank or give us better judges.

Libertarian activists need to set aside their decades-old knee-jerk reactions to the two major parties, roll up their sleeves, and make the Republican and Democratic parties more libertarian. When it comes to voting, libertarians need to get serious about liberty and give up on the Libertarian Party. Nov. 6 would be a good day to start.